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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,527	11/12/2003	Angela Francise	JZTO.110543	7686
5251	7590	03/19/2004	EXAMINER	
SHOOK, HARDY & BACON LLP 2555 GRAND BLVD KANSAS CITY,, MO 64108			CHIU, RALEIGH W	
			ART UNIT	PAPER NUMBER

3711

DATE MAILED: 03/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center"><b>Office Action Summary</b></p>	<p>Application No.</p> <p align="center">10/706,527</p>	<p>Applicant(s)</p> <p align="center">FRANCISE, ANGELA</p>	
	<p>Examiner</p> <p align="center">Raleigh Chiu</p>	<p>Art Unit</p> <p align="center">3711</p>	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

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### **DETAILED ACTION**

#### ***Oath/Declaration***

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required.

See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1, 2 and 5-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Design Patent Number D430,750

(Withem) in view of U.S. Patent Number 5,961,363 (Spector).

Regarding claims 1, 2, 10 and 13, Figures 1-5 of Withem show a Noah's ark toy chest corresponding to the larger hollow

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container. Figures 1 and 2 of Spector show a toy dinosaur 10 placed within an egg-shaped container 11 which broadly corresponds to a game piece placed in a small container. As toy chests are intended to contain toys and there is no requirement that toys be thematically-related to toy chests, it would have been obvious to one of ordinary skill in the art to place a plurality of Spector toys in the Withem toy chest for storage purposes.

Regarding the last four lines of claim 1, such a recitation is considered to be a method having no patentable weight in an apparatus claim. Further, the Withem/Spector combination is considered to be inherently capable of being used as recited.

Regarding claims 5-9 and 11, Spector teaches that any type of animal could be used. See column 3, lines 62-65.

Regarding claim 12, any Spector toy can be broadly considered to be a wild token.

4. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Withem and Spector as applied above in view of U.S. Patent Number 1,300,654 (Pittman).

Regarding claims 3 and 4, although Figures 1 and 2 of Spector show the container to be egg-shaped, Spector also teaches an embodiment where the container can take form of an animal cage. See column 5, lines 5-9. As such, Pittman shows

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that toy cages are old and well-known in the art to be viewed through one side only.

5. Claims 1 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Withem as applied above in view of U.S. Patent Number 1,617,772 (Sergel et al., hereinafter Sergel).

Regarding claims 1 and 14, Figures 1-5 of Withem show a Noah's ark toy chest corresponding to the larger hollow container. Sergel shows playing cards with animal depictions which correspond to the recited game pieces. See page 1, lines 25-30. Because it is old and well-known in the art to have a plurality of card decks for playing different games and it is also well-known to those of ordinary skill in the art that decks of cards are pre-packaged in boxes, a plurality of Sergel decks or cards stored in the Withem toy chest would meet the recited limitations of the claims.

#### **Conclusion**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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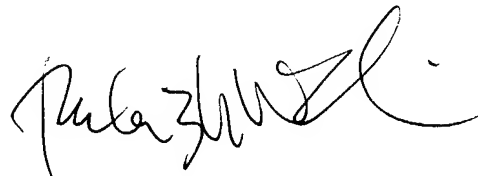
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raleigh Chiu whose telephone number is (703) 308-2247. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes, can be reached on (703) 308-1806.

The fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Raleigh W. Chiu  
Primary Examiner  
Technology Center 3700

RWC:dei:feif  
16 March 2004